

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Government,

HONORABLE GEORGE CARAM STEEH

v.

No. 15-20652

D-3 EUGENE FISHER,
D-4 COREY BAILEY,
D-6 ROBERT BROWN,
D-13 ARLANDIS SHY,
D-19 KEITHON PORTER,

Defendants.

JURY TRIAL

Thursday, August 23, 2018

- - -

APPEARANCES:

For the Government:

JULIE FINOCCHIARO, ESQ.
JUSTIN WECHSLER, ESQ.
TARE WIGOD, ESQ.
MARK BILKOVIC, ESQ.
Assistant U.S. Attorneys

For the Defendants:

HENRY M. SCHARG, ESQ.
On behalf of Eugene Fisher

CRAIG DALY, ESQ.
KEITH SPIELFOGEL, ESQ.
On behalf of Corey Bailey

JAMES FEINBERG, ESQ.
On behalf of Robert Brown

MARK MAGIDSON, ESQ.
JOHN THEIS, ESQ.
On behalf of Arlandis Shy

STEVEN SCHARG, ESQ.
On behalf of Keithon Porter

- - -

To Obtain Certified Transcript, Contact:
Ronald A. DiBartolomeo, Official Court Reporter
Theodore Levin United States Courthouse
231 West Lafayette Boulevard, Room 1067
Detroit, Michigan 48226
(313) 962-1234

Proceedings recorded by mechanical stenography.
Transcript produced by computer-aided transcription.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

	<u>Page</u>
Jury deliberations	4

E X H B I T S

<u>Identification</u>	<u>Offered</u>	<u>Received</u>
-----------------------	----------------	-----------------

N O N E

Detroit, Michigan

Thursday, August 23, 2018

At 8:30 a.m.

- - -

(Jury resumed deliberations.)

(Proceedings held without jury at 2:41 p.m.)

THE COURT: Okay. I have been waiting for a message from the jury that might require that we all gather, so I decided we better -- I wanted to fill you in on an occurrence.

First, I'm going to read into the record the jury requests for evidence that has been received over the past couple of days -- actually going back to Tuesday.

MR. SPIELFOGEL: Are they bringing them over?

THE COURT: Yes. This part of it, I don't think would really matter for the defendants. It's just a description of the evidence that was brought in.

MR. THEIS: That's fine with us, unless Mr. Spielfogel --

MR. SPIELFOGEL: No, as far as what evidence has gone back, that's fine.

THE COURT: All right. We're waiting to bring in your clients for the jurors to be out of the

1 building. It looks like we have a few minutes to wait.
2 So you can resume your conversations.

3
4 (Recess taken.)

5
6 (Proceedings resumed.)

7
8 **THE CLERK:** Case Number 15-20652, United
9 States of America versus Eugene Fisher, Corey Bailey,
10 Robert Brown, Arlandis Shy and Keithon Porter.

11 **THE COURT:** All right. Good afternoon.

12 The record should reflect the defendants and
13 counsel are all here, and the Court asked for you to
14 assembled.

15 As I started to indicate earlier, I have been
16 waiting to address a matter to the parties that would be
17 done in conjunction with some note from the jury ideally,
18 but no note has been forthcoming today, other than notes
19 requesting evidence, and I'm going to begin by reading the
20 notes that we have received from the jury since we last
21 assembled on Tuesday, and those include a message that
22 came at 1:30 asking for Exhibits 409a through hh, 412,
23 415, and 416.

24 Another note came at 1:45 p.m., asking for
25 Exhibits 61, 62, 64, 65, and 66.

15-20652; USA v. EUGENE FISHER, ET AL

1 Another note came at 2:00 p.m., and they asked for
2 Defense Exhibit 23.

3 Another note -- that I have to say was at
4 2:00 p.m. on Tuesday.

5 On Wednesday the 22nd at 9:30 a.m., a note
6 requesting Exhibits 43, 51a through g, 45, 48, 49, 50, 51,
7 52, 53, 55, and 56.

8 At 9:15 a.m., another note requests Exhibits 159a
9 through jj, from those exhibits -- all of those exhibits
10 were not admitted. So they were given the exhibits that
11 have been admitted, which include e through g, i through
12 k, m through v, y, z, aa and cc. Also Exhibits 161, 162,
13 165 and 166.

14 The next note came at 9:48 a.m. The jurors
15 requested Exhibits 324a through u or b -- no, a through
16 o -- and from that exhibit there were two items that were
17 not admitted. So they were not delivered, and that would
18 include m and n. Also, Exhibits 325, 326, 327. On 327
19 there's a note, not an exhibit. So that did not go in.
20 They asked for 327, but that was not delivered because it
21 was not received. 328, which had already been given to
22 the jurors, 324, 330, 330a, and 325a they asked for, but
23 that too was not an exhibit. It was not admitted, and was
24 not delivered.

25 At 2:00 p.m. on Wednesday, yesterday -- today. I

1 see, August 23. So today at 2:00 p.m., the jurors
2 requested Exhibits 344a through i, or videos admitted,
3 and -- and Corey Bailey interview. Exhibits 344d through
4 g only will be provided to the jury.

5 So that summarizes the notes that have been
6 received over the last couple of days.

7 The other purpose to having you in is to relate an
8 incident that occurred on Tuesday after we addressed the
9 last note on that date to the jury, and that -- well, I
10 don't know that I need to give that you background.

11 On Tuesday, two text messages were sent to the
12 Marshals Service from one of the jurors, which reads as
13 follows:

14 First, if we think there may be some conspiracy
15 within the group, how do we voice that without being
16 singled out?

17 And second, we don't know for sure, but it is
18 really bothering some of us.

19 The marshal receiving these texts forwarded the
20 messages to his supervisory marshal, who shared the
21 messages with me just after we broke from the last note
22 from the jury.

23 The U.S. Marshal asked for permission to inquire
24 of the juror whether he or she was alleging wrongdoing or
25 jury tampering of any kind, which would require further

1 investigation.

2 I approved the request on the condition that the
3 marshal not elicit any information concerning the
4 substance of jury communications, but to strictly limit
5 the inquiry to whether the juror was alleging some kind of
6 wrongdoing in the nature of jury tampering.

7 I also directed my law clerk officer Jill Hart,
8 who is seated here, to stand by during that interview to
9 ensure that these restrictions were maintained.

10 After a very brief inquiry of the juror, the
11 marshal concluded that the juror was not alleging any
12 wrongdoing or outside influence, but the complaints
13 amounted to normal differences of opinion and alliances
14 among the jurors in their deliberations.

15 The juror sending the message then acknowledged
16 having no tangible evidence of wrongdoing, and was content
17 to continue the deliberations, and they resumed
18 deliberations, and since then no further communications.

19 So it's fairly apparent that -- that was
20 sufficient to address her concerns, and they are
21 continuing to deliberate.

22 I'm happy to answer any questions if counsel has
23 questions or comments.

24 **MR. WIGOD:** Judge, I'm sorry. Could you
25 repeat for me the two text messages?

1 **THE COURT:** Yes. The first message reads:
2 If we think there may be some conspiracy within the group,
3 how do we voice that without being singled out?

4 And the second note: We don't know for sure, but
5 it's really bothering some of us.

6 **MR. WIGOD:** Thank you, your Honor.

7 **MR. H. SCHARG:** I do have a question --

8 **THE COURT:** Yes, sir.

9 **MR. H. SCHARG:** -- regarding the
10 circumstances that this interviewed occurred. Could you
11 enlighten us a little more --

12 **THE COURT:** Yes.

13 **MR. H. SCHARG:** -- how the juror was singled
14 out away from the other jurors for this questioning?

15 **THE COURT:** Yes. So first, my first question
16 was, how does juror have the cell phone number of the U.S.
17 Marshal, and the answer to that is that they assembled.
18 He's responsible for assembling them in the morning. So
19 presumably if they have car trouble or some other reason
20 to report, running late or that they're stranded
21 somewhere, they have the means to contact the marshal who
22 is responsible for bringing them into the courthouse each
23 day. That was that answer.

24 Your question concerning this juror, we had the --
25 they had the juror number I believe, and so when the Court

1 approved the request for the inquiry, the marshal knocked
2 on door of the jury room, asked the -- asked for juror
3 such and such, indicating that there was a telephone call
4 that was being made to that jury so it would not rise to
5 some curiosity on part of the jurors, and the interview
6 took place in the adjacent -- adjacent to this jury room
7 is Judge Berg's jury room, and so he had her take a seat
8 there, asked very few questions, and was convinced that
9 there was no threat or complaint of jury wrongdoing of any
10 kind basically, just the natural process of working
11 through problems in the jury room, and so that's how that
12 happened.

13 **MR. H. SCHARG:** So it was a knock at the
14 door, and the juror was told there was some phone call for
15 that individual --

16 **THE COURT:** Yes.

17 **MR. H. SCHARG:** -- that had to be addressed
18 at that time, and the juror was isolated --

19 **THE COURT:** Yes.

20 **MR. H. SCHARG:** -- in another room. Was that
21 interviewed recorded in any fashion?

22 **THE COURT:** No. Jill stood by, but Jill also
23 advised the jurors not to continue deliberating until this
24 excused juror was sent back in the room.

25 **MR. H. SCHARG:** I'm not asking to see if it

1 exists, it's probably under seal, but was there a report
2 generated by the U.S. Marshals relative to that interview?

3 **THE COURT:** I don't believe so. If there's
4 a -- well, I don't believe so, but I'm sure he would be
5 able to produce such a report.

6 **MR. H. SCHARG:** I'm not asking for the
7 report, but if there was a report, I would assume it will
8 be sealed. I just wanted to know if there is some type
9 of -- if the interview was memorialized in any fashion?

10 **THE COURT:** No. My impression was that the
11 interview lasted for about three minutes.

12 Okay. So that's where we stand.

13 **MR. FEINBERG:** Judge, I have one request. I
14 would ask that -- I'm asking that the Court only proceed
15 until 1:30 tomorrow unless there's a verdict. I have a
16 funeral at 3:00 in Pickney, and I would like to go to it.

17 **THE COURT:** I don't think anybody would
18 object to that request. The only reason -- I will say
19 yes, conditionally. If the jurors are giving some hint
20 that they've reached a verdict, which is not extremely
21 uncommon on a Friday afternoon, then I would want to take
22 the verdict, but other than that if it appears it's going
23 to end a normal days work, I'll be happy to accommodate.

24 **MR. FEINBERG:** Thank you very much.

25 **THE COURT:** Okay.

1 **MR. BILKOVIC:** I know the Court doesn't have
2 control over the U.S. Marshal Service, but would the Court
3 be willing to request of the marshal that did the
4 interview, that he does prepare a report that the Court
5 has in case it is needed in the future, some documentation
6 of what happened during the interview?

7 **THE COURT:** Right. Sure. I'll be glad to.

8 **MR. BILKOVIC:** Thank you.

9 **THE COURT:** Part of my reasoning of having
10 our jury officer stand by, was to make sure that an
11 accurate --

12 **MR. BILKOVIC:** She can make a written
13 statement too.

14 **THE COURT:** Okay. All right. Have a good
15 night, and see you tomorrow.

16

17 (Proceedings adjourned for the day at 3:11 p.m.)

18 - - -

19

20

21

22

23

24

25

C E R T I F I C A T I O N

I, Ronald A. DiBartolomeo, official court reporter for the United States District Court, Eastern District of Michigan, Southern Division, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings in the above-entitled cause on the date hereinbefore set forth.

I do further certify that the foregoing transcript has been prepared by me or under my direction.

s/Ronald A. DiBartolomeo
Ronald A. DiBartolomeo, CSR
Official Court Reporter

February 4, 2019
Date

- - -